

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EFRAIN CARDENAS ALCARAS,

Petitioner,

v.

PAUL THOMPSON, et al.,

Respondents.

No. 2:21-cv-01767-DAD-DMC (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
RESPONDENTS' MOTION TO DISMISS
THIS ACTION

(Doc. Nos. 8, 11)

Petitioner Efrain Cardenas Alcaras is a federal prisoner proceeding *pro se* with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 1, 2022, the assigned magistrate judge issued findings and recommendations recommending that respondent's motion to dismiss (Doc. No. 8) be granted due to petitioner's failure to first exhaust his administrative remedies and failure to state a claim upon which relief can be granted under 28 U.S.C. § 2241. (Doc. No. 11.) Those findings and recommendations were served on all parties and contained notice that any objections thereto were to be filed within fourteen (14) days from the date of service. (*Id.* at 5.) To date, no objections have been filed and the time in which to do so has now passed.¹

¹ This case was reassigned to the undersigned district judge on August 25, 2022. (Doc. No. 12.)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
2 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
3 court finds the findings and recommendations to be supported by the record and proper analysis.
4 Accordingly, respondents' motion to dismiss the pending petition will be granted.

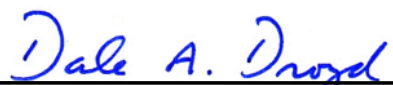
5 Additionally, the court declines to issue a certificate of appealability. A petitioner seeking
6 writ of habeas corpus has no absolute right to appeal; he may appeal only in limited
7 circumstances. *See* 28 U.S.C. § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003). Rule
8 11 of the Rules Governing Section 2254 Cases requires that a district court issue or deny a
9 certificate of appealability when entering a final order adverse to a petitioner. *See also* Ninth
10 Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). The court will
11 issue a certificate of appealability “if jurists of reason would find it debatable whether the petition
12 states a valid claim of the denial of a constitutional right and that jurists of reason would find it
13 debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529
14 U.S. 473, 484 (2000). Here, reasonable jurists would not find the court's decision to dismiss the
15 petition to be debatable or conclude that the petition should proceed further. Thus, the court
16 declines to issue a certificate of appealability.

17 Accordingly,

- 18 1. The findings and recommendations issued on August 1, 2022 (Doc. No. 11) are
19 adopted in full;
- 20 2. Respondents' motion to dismiss the pending petition (Doc. No. 8) is granted;
- 21 3. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 22 4. The court declines to issue a certificate of appealability; and
- 23 5. The Clerk of the Court is directed to close this case.

24 IT IS SO ORDERED.

25 Dated: November 10, 2022

26 
UNITED STATES DISTRICT JUDGE